

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

THE CENTRUYLINK COMPANIES - QWEST CORPORATION; CENTURYTEL OF
WASHINGTON; CENTURYTEL OF INTERISLAND; CENTURYTEL OF
COWICHE; AND UNITED TELEPHONE COMPANY OF THE NORTHWEST

Respondent.

DOCKET UT-240029

**DAVID BREVITZ, C.F.A.
ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

EXHIBIT DB-11

Public Utilities Commission of the State of California Decision Dismissing with
Prejudice, Pacific Bell Telephone Company's Application for Targeted Relief from its
Carrier of Last Resort Obligation

July 12, 2024

ALJ/TJG/hma

Date of Issuance: 6/25/2024

Decision 24-06-024 June 20, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Bell Telephone
Company d/b/a/ AT&T California
(U1001C) for Targeted Relief from its
Carrier of Last Resort Obligation and
Certain Associated Tariff Obligations.

Application 23-03-003

**DECISION DISMISSING WITH PREJUDICE THE APPLICATION OF AT&T
CALIFORNIA TO WITHDRAW AS A CARRIER OF LAST RESORT**

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DECISION DISMISSING WITH PREJUDICE THE APPLICATION OF AT&T CALIFORNIA TO WITHDRAW AS A CARRIER OF LAST RESORT

Summary

This decision grants the Motion to Dismiss, filed by the California Public Utilities Commission's (Commission) Public Advocates Office on June 30, 2023. Granting this motion dismisses with prejudice the Application of Pacific Bell Telephone Company d/b/a/ AT&T California (AT&T) "for Targeted Relief from its Carrier of Last Resort (COLR) Obligation" filed and served on March 3, 2023 and amended on May 17, 2023.

The Commission's COLR withdrawal rules, adopted in Decision (D.) 96-10-066 and affirmed in D.12-12-038, require either the presence of an existing COLR in the service territory a current COLR wishes to withdraw from, or for a new COLR to volunteer to replace the COLR seeking permission to withdraw. No other COLR serves AT&T's service territory. No potential COLR applied to replace AT&T.

Given that AT&T's Application, as amended, does not meet the requirements of the Commission's COLR withdrawal rules, and the existing undisputed facts of this case make that clear, AT&T's Application is dismissed with prejudice.

This proceeding is closed.

Finally, the Commission intends to initiate an Order Instituting Rulemaking to consider whether to revise its COLR rules.

1. Procedural Background

On March 3, 2023, Pacific Bell Telephone Company d/b/a/ AT&T California (AT&T) filed its Application “for Targeted Relief from its Carrier of Last Resort (COLR)¹ Obligation.”

On May 3, 2023, the assigned Administrative Law Judge (ALJ) ordered AT&T to amend its Application, due to substantial incompleteness.²

On May 17, 2023, AT&T filed its Amended Application.³

On June 30, 2023, Cal Advocates filed its Motion to Dismiss.

A prehearing conference (PHC) was held on August 3, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

¹ The definition of a COLR is “A local exchange service provider that stands ready to provide basic service to any customer requesting such service within a specified area. To be a COLR, the provider must meet Commission-approved qualifications.” A COLR is required to provide all elements of basic service, including:

- Offering customers the ability to place and receive voice-grade calls over all distances utilizing the public switched telephone network or successor network;
- Free access to 9-1-1/Enhanced (E) 9-1-1 service;
- Access to directory services;
- Billing Provisions;
- Access to 800 and 8YY Toll-Free Services;
- Access to Telephone Relay Service as provided for in Pub. Util. Code, § 2881;
- Free access to customer service for information about Universal Lifeline Telephone Service (ULTS) service activation, service termination, service repair and bill inquiries;
- One-time free blocking for information services, and one-time billing adjustments for charges incurred inadvertently, mistakenly, or without authorization; and
- Access to operator services.

Additional requirements of COLRs include participation in California LifeLine.

² For a number of reasons, the assigned ALJ found that AT&T’s application was deficient and insufficient to scope the proceeding, including that AT&T did not identify the specific areas or communities where it sought relief. *See* Ruling at 3.

³ Unless otherwise specified for the purposes of a citation, “Application” will refer to either AT&T’s Application or its Amended Application.

On November 21, 2023, the Assigned Commissioner issued a Scoping Memo and Ruling, setting forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code (Pub. Util. Code) section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

On February 20, 2024, the assigned ALJ notified potential COLRs regarding AT&T's Application, as well as the opportunity to apply to replace AT&T as a COLR in those territories. Potential COLRs had until April 30, 2024 to inform the Commission if they wished to replace AT&T.^{4,5}

No potential COLR responded to the February 20 Notice by the April 30, 2024 deadline.

2. The Commission's COLR Rules

Assembly Bill (AB) 3643, enacted in 1994, directed the Commission to initiate a proceeding to ensure universal telecommunications service includes "[e]ssential telecommunications services" that is "provided at affordable prices to all Californians regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations."⁶

In Decision (D.) 95-07-050, the Commission proposed that the incumbent Local Exchange Carriers (LEC) be the designated COLR in all of their service areas until such time that another carrier or carriers are designated to be a COLR. The Commission adopted its COLR rules in D.96-10-066, stressing that the COLR

⁴ On February 28, 2024, the assigned ALJ issued a ruling, apprising the Service List in this proceeding that the notice was served.

⁵ Ahead of the assigned ALJ serving the notice, parties received an opportunity to review and offer edits.

⁶ Stats. 1994, Ch. 278 (Polanco and Moore)

concept “is important to universal service policy because it ensures that customers receive service.”⁷ All of the incumbent LECs listed in Attachment A of D.96-10-066 were designated as the COLR in all their respective service areas (also called geographic study areas, or GSAs) at least until such time that another carrier or carriers are designated as the COLR.⁸ To that end, the Commission’s COLR rules required a designated COLR to retain its obligations until another carrier is designated.⁹ The COLR Rules also include a procedure to replace the last remaining COLR.¹⁰

A designated COLR may opt out of its obligations GSA by advice letter unless it is the only COLR remaining in its service territory. If no other COLRs serve the territory in question, a COLR must file an application to withdraw as the COLR and continue to act as the COLR until the application is granted (because a new COLR has come forward) or a new COLR has been designated as a result of an auction.¹¹

In adopting D.12-12-038, the Commission affirmed, among other items, the Commission’s COLR withdrawal rules.

3. AT&T’s Amended Application

AT&T asks the Commission to relieve it of its COLR obligations in much of its service territory. Specifically, AT&T requests the following relief:

⁷ D.96-10-066 at 109.

⁸ *Id.*, at 163.

⁹ *Id.*, at 109.

¹⁰ *Id.*

¹¹ *Id.*

- In areas where “voice alternatives”¹² that offer voice service, AT&T would be relieved of its COLR obligations;
- AT&T customers would have a six-month transition period;
- Modification to AT&T’s basic service tariff; and
- For areas currently without voice alternatives, the Commission would adopt an Advice Letter process for when those areas become served by voice alternatives.¹³

AT&T contends the COLR obligation made sense during an era of monopolies, but makes no sense today, given the current marketplace. AT&T asserts its COLR customers have a number of alternatives for voice services, including VoIP service from cable companies such as Comcast or Cox, and mobile voice service from providers such as Verizon, T-Mobile, and AT&T Mobility.¹⁴ AT&T also insists its COLR responsibilities unfairly discriminate against AT&T, placing the carrier at a competitive disadvantage versus these other companies which, unburdened by COLR requirements, are able to innovate and otherwise respond to market forces.¹⁵ AT&T also claims that the funds it spends on expenses related to its duties as a COLR “could” instead be used on other activities.¹⁶

¹² *Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations* (AT&T’s Application), filed March 3, 2023, at 38. “Voice alternatives” are providers of wireline VoIP and fixed and wireless voice services. Note: AT&T’s “alternative voice providers” are not COLRs.

¹³ AT&T’s Application at 37-38.

¹⁴ *Id.*, at 3.

¹⁵ *Id.*, at 3-4.

¹⁶ AT&T repeatedly uses the words “could” or “would” as part of its claims that funds spent on its COLR obligation might be used on other activities. See AT&T’s Amended Application at 14: “With freed-up resources, AT&T California could deploy fiber broadband to additional

Footnote continued on next page.

AT&T opines that the Commission has broad authority to grant the relief it requests, citing Pub. Util. Code §§ 1708,¹⁷ 701,¹⁸ 709¹⁹ and 709.5.²⁰ AT&T further

households in rural areas across the state..." See also AT&T's Amended Application at Attachment A 1 (Declaration of Dr. Mark Israel): "...[the] COLR obligation ties up scarce resources that could better serve consumers elsewhere, including via reallocation to investment in the superior technologies." See also, AT&T's Amended Application at 13: "The COLR relief sought here would free up critical resources for similar efforts around the state." Here, AT&T is referring its work with customers who are eligible to participate in the federal Affordable Connectivity Program, as well as five Connected Learning Centers in Los Angeles. At no time does AT&T specifically commit to any activities if the Commission grants its requested relief.

¹⁷ "The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it."

¹⁸ "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

¹⁹ AT&T cites, in part, to §§ 709. In full, § 709 reads as follows:

"The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

- (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.
- (b) To focus efforts on providing educational institutions, health care institutions, community-based organizations, and governmental institutions with access to advanced telecommunications services in recognition of their economic and societal impact.
- (c) To encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.
- (d) To assist in bridging the "digital divide" by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.
- (e) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.
- (f) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

Footnote continued on next page.

declares that the Commission's intended policy is that once competition takes root, COLR status is voluntary, with carriers not only applying to become COLRs, but also requesting permission to withdraw.²¹

4. Issues Before the Commission

The Assigned Commissioner's Scoping Memo and Ruling identified the issues to be determined or otherwise considered, including those listed below.

1. Does this application meet the Commission's Universal Service Rules and standards in D. 96-10-066, as well as the definition of universal service and obligations therein?
2. Should AT&T be relieved of its COLR obligation?
3. Are other potential COLRs interested in replacing AT&T's COLR service? Where has AT&T demonstrated there are alternative COLRs?
4. Would granting this application impact public safety, including for residents in High Fire Threat Districts and Flood Zones? If yes, what is the impact? For example, will it impact access to emergency services during an emergency?
5. Would not granting this application negatively impact AT&T's ability to offer voice or broadband service in

(g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

(h) To encourage fair treatment of consumers through provision of sufficient information for making informed choices, establishment of reasonable service quality standards, and establishment of processes for equitable resolution of billing and service problems."

²⁰ § 709.5 (a) reads as follows: "It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition not later than January 1, 1997. The commission shall take steps to ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed."

²¹ *Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations (AT&T's Application)*, filed March 3, 2023, at 6.

California? Where would AT&T spend funds if it eliminates its COLR obligation that it would not spend otherwise?

6. Will granting the application result in a direct or reasonably foreseeable indirect physical change in the environment such that such environmental review pursuant to the California Environmental Quality Act (CEQA) is required?
7. Does the requested action have any impact on environmental and social justice communities, including the extent to which it impacts the achievement of any of the goals of the Commission's Environmental and Social Justice Action Plan? Are there other impacted individuals, such as persons with disabilities?
8. Do the potential benefits of granting this application exceed any potential negative effects on customers?
9. Should the Commission adopt Applicant's proposed Advice Letter process for communities it asserts currently do not have another voice option beyond AT&T California?

5. Cal Advocates' Motion to Dismiss

Cal Advocates requests the Commission dismiss the Application with prejudice, or dismiss without prejudice "and make clear that if AT&T continues its failure to comply with rulings and rules, its application will be dismissed with prejudice."²² Cal Advocates asserts AT&T's Application does not comply with the Commission's COLR Rules, and is incompatible with California's

²² *Motion of Cal Advocates to Dismiss Amended Application of Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C) for Targeted Relief from Its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations* (Motion to Dismiss), filed June 30, 2023, at 1-2.

commitment to universal service, espoused in AB 3643 and Pub. Util. Code § 709(a).²³

Relying on D.18-11-028 and D.99-11-023, among other authorities, Cal Advocates argues the Commission must dismiss an application when the outcome is a forgone conclusion.²⁴

6. AT&T's Response

AT&T claims that Cal Advocates' argument "pushes the envelope of advocacy."²⁵ AT&T also opines that Rule 6.D.7 of the Commission's Universal Service Rules provides that a carrier that has applied for COLR relief must "continue to act as the COLR" only until *either* (emphasis added) "[1] the application is granted *or* (emphasis added) [2] a new COLR has been designated as a result of an auction."²⁶ AT&T claims the Commission may grant its COLR relief application for good cause shown, whether or not it has designated a new COLR. AT&T further contends that Cal. Pub. Util. Code §§ 1708 and 701 allow the Commission to "rescind, alter, or amend any order or decision made by it, including when market conditions underlying the decision "have undergone a material change."²⁷

²³ "The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high quality telecommunications services to all Californians. . ."

²⁴ Motion to Dismiss at 5-6.

²⁵ *Pacific Bell Telephone Company D/B/A AT&T California's Response to the Motion to Dismiss of the Public Advocates Office at the California Public Utilities Commission* (AT&T's Response), filed July 14, 2023, at 2.

²⁶ *Id.*

²⁷ AT&T's Response at 3.

Additionally, AT&T argues that the Commission abandoned the reverse auction mechanism in D.14-06-008.

7. COLR Withdrawal Rules

Under Appendix C, Section 6(c) in D.12-12-038 and Appendix B, Section C in D.96-10-066, the Commission can grant a COLR withdrawal application in one of two ways: (a) another carrier is identified and is willing to serve as a COLR or (b) a reverse auction is held, the result of which another carrier comes forward and is willing (and able) to serve as a COLR. If no replacement COLR is identified in the application or if a replacement COLR does not come forward once the application has been filed, the Commission must hold a reverse auction. The Commission cannot grant an application to withdraw as a COLR if there is no replacement COLR.

Appendix B contains the Commission's Universal Service Rules, including 6.D.1, which designates all incumbent LECs listed in Attachment A as the COLR in all their respective service areas at least until such time that another carrier or carriers are designated as the COLR,²⁸ and Rule 6.D.7, which allows a designated COLR to may opt out of its obligations by advice letter, unless it is the only carrier remaining in the service territory or a new COLR has been designated as a result of an auction.²⁹

Although AT&T argues that the "or" in Rule 6.D.7 indicates that the Commission could just grant its application without a new designated COLR in place, that is not only an inaccurate reading of the Commission's COLR Rules, but it would render the COLR and Universal Service Rules meaningless. The

²⁸ D. 96-10-066 at 163.

²⁹ *Id.*

Commission cannot ignore the other COLR Rules requiring a designated COLR, or the statute and Rule's clear intent for universal service to operate as a safety net. The accurate and more consistent reading of 6.D.7 is the last COLR must continue its obligations until the application is granted, because another carrier has entered the market and taken on COLR obligations.

8. Standard for Granting a Motion to Dismiss

The Commission treats a motion to dismiss as a court of general jurisdiction would treat motions for summary judgment in civil practice.³⁰ While there is no Commission rule expressly for summary judgment motions, Rule 11.2 of the Commission's Rules of Practice and Procedure allows parties to file a motion to dismiss a proceeding based on the pleadings (other than a motion based upon a lack of jurisdiction) by no later than five days prior to the first day of hearing. The Commission has held that the purpose of both types of motions is to permit determination before hearing whether there are any triable issues as to any material fact.³¹ The interpretation of a statute or regulation is generally seen to be a pure legal issue.³²

A further purpose of such a motion is that it promotes and protects the administration of justice and expedites litigation by the elimination of needless

³⁰ *Westcom Long Distance, Inc. v. Pacific Bell et al.*, Decision (D.) 94-04-082, 54 CPUC2d 244, 249.

³¹ *Id.*

³² *See Manriquez v. Gourley*, 105 Cal. App. 4th 1227, 1234-35 (2003), quoting from *Culligan Water Conditioning v. State Bd. of Equalization*, 17 Cal.3d 86, 93 (1976).

trials.³³ As such, where appropriate, the Commission regularly grants motions for summary judgment or summary adjudication.³⁴

When reviewing a motion to dismiss, the Commission assumes “the facts as alleged in the application are true for the purposes of deciding whether to grant a motion to dismiss... [and]... the applicant will be able to prove everything the applicant alleged in its application...”³⁵ However, the Commission does “not accept as true the ultimate facts, or conclusions, that Applicant alleges, for instance, that granting the [application] would be in the public interest.”³⁶ Applications have been dismissed on policy grounds, to husband limited resources, to avoid conflict with statutory policy, to avoid inefficiency, “and many other reasons.”³⁷ Additionally, the Commission has held that, “[a]fter accepting the facts as stated, the Commission then merely looks to its own law and policy. The question becomes whether the Commission and the parties would be squandering their resources by proceeding to an evidentiary hearing when the outcome is a foregone conclusion under the current law and

³³ *Westcom Long Distance, Inc. v. Pacific Bell et al.*, D. 94-04-082, 54 CPUC2d 244, 249.

³⁴ See D.07-07-040 (granting Chevron judgment against Equilon “as a matter of law”); D.07-01-004 (granting Cox Telecom judgment against Global NAPs of California); D.02-04-051 (granting summary adjudication of a claim by County Sanitation District against Southern California Edison Company).

³⁵ *Application of GoGo Technologies, Inc. (dba GoGoGrandparent) for order declaring Applicant to be a non-regulated entity; to stay enforcement action pending resolution*, D.18-11-028 (2018 WL 6566916 at 2) (quoting *Application of Western Gas Resources-California, Inc. for a Certificate of Public Convenience and Necessity to Provide Public Utility Gas Transmission and Distribution Services*, D.99-11-023, 1999 Cal. PUC LEXIS 856, 10-11 (Cal. PUC 1999)).

³⁶ *Id.*

³⁷ D.99-11-023 at 2.

policy of the Commission.”³⁸ While the Commission may elect to alter policy in connection with an application, it can make the choice not to do so at the outset of an application in response to a motion to dismiss.³⁹

Cal Advocates filed its Motion to Dismiss on June 30, 2023 and no hearing has been held in this proceeding.

9. Based on the Existing Record AT&T’s Legal and Factual Analysis is Fatally Flawed

The purpose of the Commission’s COLR Rules is to ensure that there is a public utility which is obligated to serve all the customers that request service in its service area.⁴⁰

There can be no misconstruing the Commission’s intent, even though AT&T attempts to do that, with its argument that the Commission’s COLR Rules allow the Commission to grant AT&T’s application without the presence of a replacement COLR.

AT&T’s Application contains additional flaws that it cannot overcome.

9.1. The Commission Must Allow Potential Replacement COLRs to Replace AT&T

AT&T has repeatedly misstated that, in adopting D.14-06-008, the Commission abandoned the reverse auction mechanism in D.96-10-066.⁴¹ As noted in the Assigned Commissioner Scoping Memo and Ruling for this

³⁸ *Id.*, at 3.

³⁹ *Id.*

⁴⁰ D.96-10-066 at 193.

⁴¹ In addition to making this incorrect claims in filings, AT&T representatives repeated its incorrect statement at the PHC (*See*, Reporters’ Transcript, August 3, 2023, at 92:6-93:8) at an ex parte meeting with advisors for the assigned Commissioner and another Commissioner (*See*, Notice of Ex Parte Communication of AT&T California, filed February 16, 2024 at 3-4) and at another ex parte meeting with advisors for another Commissioner (*See*, Notice of Ex Parte Communication of AT&T California, filed February 29, 2024 at 2-4).

proceeding, D.14-06-008 concerns calculating cost support amounts, not the safety net auction to identify a COLR that would replace the COLR seeking to withdraw from a specific territory.⁴² D.14-06-008 does not impact the Commission's ability to carry out a COLR auction process. A more thorough review of R.09-06-19 confirms this.

D.14-06-008 was issued in R.09-06-019, an Order Instituting Rulemaking (OIR) Regarding Revisions to the California High Cost Fund B Program. D.14-06-008 adopted provisions to implement updated methodologies to calculate cost support amounts. Amending High Cost Fund B support amount is a completely separate issue from amending the COLR requirement, including changing the requirement for a reverse auction.

The full reference in D.14-06-008 that AT&T relies on is:

"Although we initially undertook to further consider the issue of a reverse auction process in this rulemaking, the assigned Commissioner ultimately determined to first address updating basic telephone service requirements before considering the merits of a reverse auction or other measures to update high cost support amounts."⁴³ (*emphasis added*)

The Assigned Commissioner's Amended Scoping Memo and Ruling for R. 09-06-019, issued January 23, 2013, is even more explicit that the reverse auction discussed was focused on setting high-cost support amounts:

"Prior to the most recent Amended Scoping Memo, this proceeding had been considering the design of a reverse auction as a mechanism to set high-cost support amounts based on market forces. The assigned Commissioner, however, had determined to address the updating of

⁴² See, Footnote 4

⁴³ D. 14-06-008 at 5.

requirements for basic telephone service as a priority before considering whether to continue to implement a reverse auction or to pursue other measures to update high cost support amounts.”⁴⁴

Furthermore, in order to amend the reverse auction process adopted in D.96-10-066 (and reaffirmed in D.12-12-038), the Commission would have needed to scope the issue in R.09-06-019 and provide parties to R.95-01-020/I.95-01-021 (the proceedings in which D.96-10-066 was issued) with notice and an opportunity to be heard on this issue in order to comply with Pub. Util. Code § 1708.

The Commission did neither of these things. The reverse auction process to replace COLRs/allow for a COLR withdrawal as adopted in D.96-10-066, and affirmed in D.12-12-038, has never been amended. Furthermore, consistent with Pub. Util. Code § 1708, the Commission typically revises industry-wide rules issued in a rulemaking in a new industry-wide rulemaking, not in an application filed by a particular provider for specific relief.

The only way to not hold a reverse auction in the current AT&T COLR proceeding would be to give notice and opportunity to be heard to the service lists of R.95-01-020/I.95-01-021 and R.09-06-019 because the Commission would be deviating from the requirements of D.96-10-066 and D.12-12-038, which would take a significant amount of time.

It would also not make sense to address the reverse auction within the confines of AT&T's Application, as D.96-10-066 and D.12-12-038 were issued in rulemakings, and this is an industry-wide issue.

⁴⁴ Assigned Commissioner Amended Scoping Memo and Ruling (R. 09-06-019), issued January 29, 2013, at 2.

Thus, under the COLR Rules, the Commission must conduct the reverse auction process.

9.2. No Potential COLR Volunteered to Replace AT&T

AT&T has already indicated that there is not another COLR in AT&T's service territory.⁴⁵ Further, no carrier eligible to replace AT&T as a COLR volunteered to do so.

9.3. AT&T's Proposed Alternatives are not COLRs

The alternatives for voice service that AT&T claims can replace its COLR service -- including VoIP service from cable companies such as Comcast or Cox, and mobile voice providers such as Verizon, T-Mobile, and AT&T Mobility⁴⁶ -- do not meet the definition of a COLR.⁴⁷ These companies did not apply to be COLRs and the Commission has not designated them as such. The voice alternatives AT&T claims can replace its COLR service are not required to offer voice service to everyone that requests it. Further, these companies may not even be able to meet that requirement.

Depending on the area in question, a cable company may need to build out its network in order to meet the requirement of offering service to any potential customers that request the service. In the case of the mobile voice providers, many comments at public participation hearings and on the Docket Card for this proceeding⁴⁸ call into question whether the companies are able to offer service to

⁴⁵ Amended Application at 7-8 and PHC Transcripts at 13:22-24.

⁴⁶ *Id.*, at 3.

⁴⁷ AT&T does not claim otherwise.

⁴⁸ Examples of these public comments include, but are not limited to, the ones discussed below. Public Comment of Wallace Stahl, Reporters' Transcript, Ukiah, California, February 22, 2024 at 292:9-15:

Footnote continued on next page.

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every potential customer that requests it, given the gaps in these wireless

"These existing lines still go to where the signals, tower signal dependent cell towers don't reach ... allowing AT&T to abandon the far flown customers who live outside or below the available microwave signals stopped by the mountains or below them in canyons like (indecipherable) and Brooktrails just a mile or two outside of Willits."

Public Comment of Neil Altimari, Reporters' Transcript, Ukiah, California, February 22, 2024 at 293: 24-295:9:

"...I live locally here in Mendocino County, Redwood Valley... we have got two cell phone carriers up there, and I have my landline through AT&T. One cell phone is through T-Mobile and it gets one bar, a lot of dropped calls; and another one is through AT&T, and it gets one bar and a lot of dropped calls... I work up here in Laytonville California (indecipherable) if you're not sure where it's at. And in that fire station -- in the fire station, I have got no cell phone service through T-Mobile and nothing on the AT&T cell phone..."

Public Comment of Victor Aparicio, Reporters' Transcript, Ukiah, California, February 22, 2024 at 299:7-300:9:

"I am a tribal member from the Manchester Point Arena Band of Pomo Indians. I am also on the Board of Trustee for Point Arena School District..."

I heard ... the AT&T rep, talk about Comcast and all these wonderful things and, you know, AT&T wireless and all of that. Well, anybody that lives on the South Coast in Point Arena specifically knows that that is merely impossible.

I am the water operator for my tribe. I was a former tow truck driver also, and I covered almost 100 miles of ... land while I was a tow truck driver and probably had cell service maybe 30 percent of the time...

[My Aunt] can't get cell service out where she's at because of the -- because of the trees. So, there is no help for her. She's tried T-Mobile, AT&T, Verizon, US Cellular, none of them work..."

Public Comment of Liz Cooper, Browns Valley, CA, submitted on April 28, 2024:

"...I live in the Yuba County Foothills. My home is in a valley and does not receive any cell phone coverage unless I climb up a hill about 1000 yards..."

Public Comment of Armen Carlon, Forest Ranch, CA, submitted on April 28, 2024:

"The proposed map submitted by AT&T for relief from landline obligations is absolutely NOT correct for our address.... The alleged wireless coverage at this location is unreliable and cannot be depended on in an emergency, such as the Camp Fire, when wireless communications systems were rendered useless. This is a safety and hazard issue, and removing this service will put lives in danger..."

Public Comment of William Carriere, Glenn, CA, submitted on April 26, 2024:

"Our home is located along the Sacramento River in Glenn County. Cell service is spotty at best. This area is completely covered in Blue by the map, indicating that service exists.

Footnote continued on next page.

providers' coverage due to changes in terrain, dense foliage, geographic or structural obstacles and other characteristics that limit wireless signal propagation.⁴⁹

The Commission's COLR Rules do not allow for non-COLR alternatives to replace a COLR. Further, during the 2015-2016 session, the Legislature considered legislation, AB 2395, that, if passed into law, would have changed

I have calls dropped all the time along the river and especially along Hwy 45 in Glenn and Colusa counties. Unfortunately T-Mobile, Verizon and others I have tried are even worse than ATT, so stuck with spotty ATT service."

⁴⁹ The Commission has made similar observations regarding wireless eligible telecommunication carriers not being able to serve everywhere in their claimed service territories. *See, e.g.,* Resolution T-17437, which conditionally approved the ETC application of TAG Mobile, LLC at 15, Resolution T-17436, which conditionally approved the ETC application of Boomerang Wireless, LLC, at 15, Resolution T-17466, which conditionally approved the ETC application of Global Connection, Inc. of America, doing business as "Stand Up Wireless," at 14 and Resolution T-17448, which conditionally granted the ETC application of Air Voice Wireless, LLC at 17:

"Although wireless phone service offers great mobility for consumers, there are safety concerns related to wireless mobile phone service and E-911 and/or 911 connection limitations. Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own direct customers."

See also, Resolution T-17473, which conditionally approved the ETC application of Blue Jay Wireless, LLC at 11: "Blue Jay will require consumers to make an outbound call to activate their service." At 18:

"CD staff has safety concerns in two main areas of wireless phone service: the coverage of wireless mobile phone service and the ability of emergency first responders to find the location of the caller when using a mobile phone.

Where there is a lack of coverage, poor signal strength, or atmospheric or terrain conditions that affect connections, emergency calls may not be completed. In rural areas, for example, with spotty connectivity or interference (e.g. due to geographic or structural obstacles), wireless mobile resellers of wholesale facilities service cannot guarantee full, accessible emergency connections for their own customers. An incomplete emergency call can have devastating results."

existing law to allow for the relief AT&T seeks in its Application, if these purported alternatives met certain requirements.⁵⁰ That legislation did not pass. In essence, AT&T seeks to effectuate the relevant portion of AB 2395, while asking the Commission to overlook that AB 2395 never became law. The Commission's COLR Rules currently do not allow for such relief, as the alternatives AT&T suggests might replace it are not COLRs, which could lead to customers being denied voice service.

10. Application Dismissed with Prejudice

The law and facts of this case are such that AT&T's Application must be dismissed with prejudice. The Commission's COLR Rules require the presence of another COLR, either one already in place or one willing to replace AT&T, for the Commission to relieve AT&T of its COLR duties. No other COLR serves AT&T's service territory and no potential COLR volunteered to replace AT&T. Thus, even if AT&T were to prove all other facts it asserts, its Application still fails to meet this standard.

It is not clear why AT&T filed this Application, under existing rules, and then attempted to convince the Commission that it should ignore its rules, based on flawed and erroneous assertions regarding the law and regulatory policy that slowed down the adjudication of this proceeding. The scope of this Application

⁵⁰ The bill would require the alternate service to provide, among other functions:

- Voice grade access to the public switched telephone network or its successor;
- Real-time, two-way voice communications;
- Access to 911; and
- Backup-battery capability meeting FCC standards (for household customer premise equipment). Notably missing from these requirements are critical basic service components such as access to LifeLine and relay services.

is not modest, as AT&T claims.⁵¹ If AT&T had wished to make industry-wide changes to the Commission's COLR Rules, it could have filed a Petition for Rulemaking under Rule 6.3 of the Commission's Rules of Practice and Procedure.

Given the unsuitability of this Application, the resources that another application would require, and the fact that the Commission intends to initiate a rulemaking regarding its COLR Rules, AT&T's Application is dismissed with prejudice. AT&T shall not file another application for COLR relief, nor a similar one, until one year after the issuance of a decision closing the new OIR discussed in Section 14.

11. AT&T Already is Able to Modernize its Network

At least publicly, AT&T has attempted to present its Application as an attempt to modernize its network. This effort includes a letter AT&T sent to customers on April 8, 2024, as well as the following statement from an AT&T representative at the public participation hearing held on February 22, 2024 in Ukiah:

"We are simply asking the PUC to work with us in a proven, measured, thoughtful, and transparent way to ensure that our customers in California have access to the most advanced reliable technology available."⁵²

AT&T's public arguments paint the picture that the Commission's COLR Rules require AT&T to retain outdated copper-based landline facilities that are expensive to maintain, or that AT&T needs Commission approval in order to be able to retire copper facilities and instead, invest in more modern technologies such as VoIP, wireless, and fiber.

⁵¹ Amended Application at 4-5.

⁵² Reporters' Transcript, Ukiah, California, February 22, 2024, at 127:4-7.

These arguments are not accurate.

The Commission does not have rules preventing AT&T from retiring copper facilities.⁵³ Furthermore, the Commission does not have rules preventing AT&T from investing in fiber or other facilities/technologies to improve its network. Indeed, AT&T reported that in Q2-4 2023 it invested over \$150 million on fiber deployment projects in California.⁵⁴ If AT&T's arguments were accurate, this activity would be illegal.

Finally, it should be noted that the Commission defines a COLR as a local exchange carrier, the COLR Rules do not distinguish between the voice services offered (VoIP vs. POTS).

12. Summary of Public Comment

Rule 1.18 of the Commission's Rules of Practice and Procedure allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. The Commission has received more than 5,000 public comments on the Docket Card in this proceeding, in addition to the public comments made at public participation hearings, at Commission voting

⁵³ D.08-11-033 adopted the process governing retirement of copper loops and related facilities to provide telecommunications services by ILECs such as AT&T. In that decision, the Commission declined to adopt rules for the retirement of copper facilities. The Commission did adopt notification requirements and rules regarding CLEC requests to purchase the copper facilities from the ILECs. However, these requirements and rules do not include any limitations or restrictions to the ILECs' ability to retire copper facilities.

⁵⁴ See, AT&T California's Revised Corrective Action Plan [Supplemental Advice Letter No.49420B of Pacific Bell Telephone Company d/b/a AT&T California (U-1001-C)], filed June 23, 2023, at 9. The actual amount is confidential.

meetings, and other venues. There has also been considerable interest and engagement from elected officials through letters to the Commission and local initiatives. An overwhelming majority of public comments do not support AT&T's Application.

13. Procedural Matters

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

14. Ordering Instituting Rulemaking

Given the age of its COLR rules, as well as changes in the marketplace, it is appropriate for the Commission to consider whether its COLR rules should be revised, and, if so, how the rules should be revised.

15. Comments on Proposed Decision

The proposed decision of ALJ Thomas J. Glegola in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On May 30, 2024, the following parties filed opening comments: Cal Advocates, CforAT, TURN, AT&T, RCRC, County of San Mateo, County of Santa Clara, Tahoe Energy Ratepayers Group, and Catalina Island Connect. On June 4, 2024, the following parties filed reply comments: AT&T, TURN, Cal Advocates, and CforAT.

No revisions have been made to this decision.

16. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Thomas J. Glegola is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The definition of a COLR is a local exchange service provider that stands ready to provide basic service to any customer requesting such service within a specified area. To be a COLR, the provider must meet Commission-approved qualifications.

2. The purpose of the COLR is to ensure that there is a public utility which is obligated to serve all the customers in its service area that request service.

3. D.96-10-066 designated the incumbent LECs as the COLR in all of their service areas until such time that another carrier or carriers are designated to be a COLR.

4. No hearing has been held in this proceeding.

5. AT&T is the only COLR in its service territory.

6. No potential COLR volunteered to replace AT&T as a COLR.

Conclusions of Law

1. The Commission's Universal Service Rules, adopted in D.96-10-066 and affirmed in D.12-12-038, require the presence of another COLR or a replacement COLR to grant a COLR withdrawal application.

2. The Commission's Universal Service Rules, adopted in D.96-10-066 and affirmed in D.12-12-038, require the Commission to offer potential COLRs the opportunity to replace AT&T as a COLR.

3. The Commission's Universal Service Rules, adopted in D.96-10-066 and affirmed in D.12-12-038, require the presence of another COLR or a replacement COLR to grant a COLR withdrawal application.

4. The Commission should dismiss this application.

O R D E R

IT IS ORDERED that:

1. The Application of Pacific Bell Telephone Company d/b/a/ AT&T California (U1001C) for Targeted Relief from its Carrier of Last Resort Obligation and Certain Associated Tariff Obligations is dismissed, with prejudice.

2. Pacific Bell Telephone Company d/b/a/ AT&T California (U1001C) shall not file another application for relief from its Carrier of Last Resort obligations until at least one year after the issuance of a decision closing the new Order Instituting Rulemaking discussed in Section 14.

3. Pacific Bell Telephone Company d/b/a/ AT&T California (U1001C) shall not file a similar application to the dismissed application until at least until one year after the issuance of a decision closing the new Order Instituting Rulemaking discussed in Section 14.

4. Application 23-03-003 is closed.

This order is effective upon issuance.

Dated June 20, 2024, at San Luis Obispo, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.

